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Nos. 81-2328, 81-2329

In The

Supreme Court of the United States

October Term, 1982

Union Texas Petroleum, a Division of Allied Chemical Corporation, *et al*,

Petitioners,

v.

Corporation Commission Of Oklahoma and Harvey W. Dierker, *et al*,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Oklahoma

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BRIEF IN OPPOSITION OF RESPONDENT CORPORATION COMMISSION OF OKLAHOMA

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August 20, 1982

QUESTION PRESENTED

Whether this Court should review an order issued by the Oklahoma Corporation Commission in furtherance of its oil and gas conservation jurisdiction, affirmed by Oklahoma's highest court as supported by substantial evidence, and entered pursuant to a statutory regulatory scheme "designed to curb waste of natural resources and to protect correlative rights" and held valid in *Cities Service Gas Co. v. Peerless Oil & Gas Co.*, 340 U.S. 179, 185 (1950).

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

Nos. 81-2329 and 81-2320

UNION TEXAS PETROLEUM, a Division of Allied Chemical Corporation, *et al*,

Petitioners,

vs.

CORPORATION COMMISSION OF OKLAHOMA and HARVEY W. DIERKSEN, *et al*,

Respondents.

BRIEF IN OPPOSITION OF RESPONDENT CORPORATION COMMISSION OF OKLAHOMA

Respondent, Corporation Commission of the State of Oklahoma, respectfully urges this Court to deny the petitions for writs of certiorari by which Union Texas Petroleum, et al, and Harper Oil Company seek review of the judgment of the Supreme Court of Oklahoma entered in this proceeding.

STATE CONSTITUTION AND STATUTE INVOLVED

Article IX, § 20 of the Oklahoma Constitution appears at pages 1-2 of the brief of respondents' Harvey W. Dierksen, et al.

52 Okl. Stat. § 87.1(d) appears in petitioners' Joint Appendix at pages 93a-94a.

STATEMENT OF THE CASE

This case involves an accumulation of oil and gas, called the Mississippian Formation, underlying 88 sections of land in Oklahoma. Pursuant to its statutory duty the Oklahoma Corporation Commission regulates the number and location of wells permitted to be drilled and produced from the Formation. Part of its duty, in prevention of waste of oil or gas, is to update its orders, rules and regulations when changed conditions or a change in knowledge of conditions so require.

The appealed order was issued by the Commission, after seven (7) days of hearing evidence, because the Commission was convinced that the current knowledge of conditions in the Formation requires a new approach to the development of the Formation if the greatest amount of economically recoverable oil and gas is to be produced therefrom.

In 1962, the first orders involving the Mississippian Formation in this area were issued. Since then, in addition to Order No. 148243 for which a review is sought in this case, the Commission has continually reviewed its issued orders and has modified many of them in those instances where the conditions have required that such be done. Petitioners are challenging Order No. 148243 which the Commission believes to be essential if waste of oil and gas is to be prevented in the Formation.

The Oklahoma Corporation Commission was created in 1907 by the State Constitution in Article IX, Sections 15-18. The Commission consists of three elected commissioners who must remain strictly independent of

the industries they regulate. Originally given broad powers to supervise, regulate, and control all transportation and transmission companies, its authority was expanded to include the gas[1] and oil[2] industries in 1913 and 1917 respectively. After seventy-five years, the majority of the Commission's work now focuses on oil and gas — Oklahoma's foremost natural resources. The Commission has exclusive authority over oil and gas conservation, well drilling and operation, and pipeline construction.

The Commission's 1962 orders involved here (Nos. 49133 and 50337, both as amended) established 640-acre spacing units in the Mississippian Formation. Based on the best available knowledge known to it at that time, the Commission determined that only one well per 640 acres was necessary to adequately and effectively drain the gas and gas condensate from the Formation.[3] Beginning in 1963 a series of modifications of those basic orders was made to prevent waste and protect correlative rights.[4] In the instance of each modification, the Commission took action only after a proper showing of changed conditions in or changed knowledge about the Formation.

In the late 1970s respondent Harvey W. Dierksen and a number of other mineral owners applied to the Commission for a decrease in the size of the spacing units. They contended that current knowledge shows that a single well is not capable of draining 640 acres. The

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[1] 1913 Okl. Sess. Laws ch. 198.
[2] 1917 Okl. Sess. Laws ch. 207.
[3] Pet. Jt. Appendix, at 49a, 61a.
[4] The modifications included orders to despace and to increase the number of wells in existing units. *See*, Pet. Jt. Appendix, at 49a-64a.

Commission agreed and issued the order which is under review. That proposed modification was opposed by petitioners who maintained that increased density, i.e., authorizing more than one well to each 640-acre spacing unit, was the action which the Commission should have taken. The Commission held a hearing, received exhibits and heard expert testimony. It concluded that conditions in the Formation and knowledge of such conditions had changed, and that more wells were needed to achieve the goal of effective and efficient recovery of oil and gas, to prevent waste and to protect correlative interests. Petitioners do not challenge here the Commission's finding that additional wells should be drilled to prevent waste and protect correlative rights. Union Texas Petroleum Petition, at 6.

Based on its experience and the evidence received during the hearing, the Commission found that a reduction in the size of the spacing units would best encourage the needed additional wells. It therefore reduced the size of the well spacing units from 640 acres to 160 acres.

Petitioners appealed to the Oklahoma Supreme Court to overturn the Commission's choice of remedy. Finding the Commission's choice of remedy supported by substantial evidence, the court affirmed.

ARGUMENT

Petitioners admit that the State of Oklahoma has a legitimate interest in preventing waste of its natural resources and in protecting the correlative rights of persons interested in those sources.[5] Pursuant to the regulatory system devised by the Oklahoma legislature, the Commission, upon proper proof that the alternative chosen is necessary to prevent waste or protect correlative rights, may either (1) despace — decrease the size of drilling units or (2) increase the well density within the existing units so as to permit more than one well in each unit. The Commission found on the evidence in this case that despacing would prevent waste and protect rights better than would increased density. The Commission found, *inter alia*, that prior authority for some increased density wells in the Formation had not been fully utilized or carried out with dispatch.[6] Petitioners label this finding as both "largely irrelevant" and "without substantial evidentiary support" and argue that such finding does not justify the selection of the despacing remedy because such action adversely affects Petitioners' leases.[7]

Such an argument does not merit this Court's attention. Once the Court is satisfied that legitimate state interests are at stake, and that a rational system to effectuate them is being used,[8] the Court should not concern itself with evaluating the specific method chosen. As was clearly stated over thirty years ago:

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[5] Union Texas Petroleum Petition, at 17.

[6] Pet. Jt. Appendix, at 50a-51a.

[7] Union Texas Petroleum Petition at 10.

[8] This Court has already evaluated the Oklahoma regulatory system and found it reasonably related to a legitimate state goal. *See, Cities Service Gas Co. v. Peerless Oil & Gas Co.*, 340 U.S. 179, 185-86 (1950).

> "It is no concern of ours that other regulatory devices might be more appropriate, or that less extensive measures might suffice. Such matters are the province of the legislature and the Commission."

Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U.S. 179, 186 (1950).

What petitioners are seeking also would seriously impair the effectiveness of the Commission. The Oklahoma legislature recognizes that different remedies might be necessary to fit different circumstances. In 52 Okl. Stat. § 87.1(d) it gave the Commission flexibility to choose one of two remedies based on the circumstances involved. If the Commission is forced to always use one remedy — increased density — its flexibility is impaired and it is less able to perform its duty of preventing waste and protecting correlative rights.

Petitioners' assertion that the Commission's de-spacing remedy is an "aberration"[9] is inaccurate. The Commission considers each application on the basis of the evidence presented, and regularly grants de-spacing when it is convinced that de-spacing is more likely than increased well density to prevent waste and protect correlative rights. *See, e.g. Union Oil Co., of California v. Brown*, 641 P.2d 1106 (Okl. 1981) (Commission order to de-space affirmed); *see also, Kuykendall v. Corporation Commission*, 634 P.2d 711 (Okl. 1981) (Commission ordered de-spacing as to certain formations).

This Respondent concurs with and adopts the arguments made by Respondents, Harvey W. Dierksen *et al*,

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[9] Union Texas Petroleum Petition, at 23.

in their Brief in Opposition that Petitioners have not raised any important public issues which merit review by this Court and that Petitioners have failed to demonstrate why this case presents any novel or important federal constitutional questions not already addressed in prior Supreme Court decisions relating to regulation of the oil and gas industry under state police power.

CONCLUSION

For the foregoing reasons, Respondent Commission urges that the petitioners for writs of certiorari be denied.

Respectfully submitted,

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August 20, 1982